IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8142 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KUMARPAL SHASHIKANT SHAH - Petitioner(s)

Versus

AEC LTD - Respondent(s)

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Appearance :

MR DAXESH T DAVE for Petitioner(s) : 1,
MR KB PUJARA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/02/2006

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order directing the

respondent authority to supply the electric power at Survey No.104/105 at village: Sarkhej, District: Ahmedabad without demanding the amount of the dues of the erstwhile owner of the petitioner.

2. It is the contention on behalf of the petitioner that the petitioner had purchased a unit namely Fibrotape Industries at Plot No.16, Survey No.104 and 105, Sarkhej at Ahmedabad in public auction conducted by the Gujarat State Financial Corporation. It is also the contention on behalf of the petitioner that the petitioner submitted an application for electricity supply as the same was disconnected and the petitioner came to be informed that there are dues of the erstwhile owner and unless the petitioner clears the same, the petitioner will not be given the electricity connection and therefore, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India for the aforesaid reliefs.

3. The petitioner has relied upon the judgment of the Hon'ble Supreme Court in case of ***Isha Marbles V/s. Bihar State Electricity Board & Ors.*** ***r***eported in **1995(2) SCC Page-648**. It appears that relying upon the

judgment of the Hon'ble Supreme Court in case of ***Isha Marbles*** (supra), the learned Single Judge while admitting the present Special Civil Application granted the interim relief by order dated 13.12.1999 directing the respondent company to reconnect the electricity connection in question without insisting on the payment of outstanding electric bill of the erstwhile owner. It appears from the record that being aggrieved and dissatisfied with the said interim order, the respondent company preferred Letters Patent Appeal No.1980 of 1999 as well as Civil Application No.15063 of 1999 in Special Civil Application No.8142 of 1999 and initially the Division Bench of this Court granted stay of the interim order dated 13.12.1999. However, during the pendency of the Letters Patent Appeal, the petitioner paid the disputed bill without prejudice to his rights and contentions and the electricity connection was given and thereafter, the Letters Patent Appeal came to be disposed of by the Division Bench by its order dated 24.10.2005 by observing and on recording the statement of the learned advocate appearing on behalf of the respondent that the appeal may be disposed of as having become infructuous because in compliance of the direction given by the learned

Single Judge, the electricity connection has been restored and accordingly the Division Bench disposed of the said Letters Patent Appeal directing that the Special Civil Application be listed before appropriate Single Bench for hearing and that is how the present Special Civil Application is placed before this Court for hearing.

4. Shri D.T.Dave, learned advocate appearing on behalf of the petitioner has relied upon the judgment of the Hon'ble Supreme Court in case of ***Isha Marbles V/s. Bihar State Electricity Board & Ors.*** ***r***eported in *1995(2) SCC Page-648* and has submitted that the instance on the part of the respondent to pay the dues of the erstwhile owner by the petitioner before requesting for the reconnection of the electric supply is illegal and as the petitioner has purchased the property in question in a public auction held by the GSFC, it is requested to allow the present Special Civil Application.

5. Shri K.B.Pujara, learned advocate appearing on behalf of the respondent company relying upon the advertisement inviting applications by the GSFC for

sale of the property in question as well as relying upon the application submitted by the petitioner as well as other documents, has submitted that the petitioner has agreed to pay the liabilities of the GEB, GIDC, etc., and therefore, once the petitioner has agreed and accepted the liabilities of GEB, GIDC, etc., of the erstwhile owner, then it is not open for the petitioner to contend that he is not liable to pay the dues of the erstwhile owner to GEB. He has relied upon the judgment of this Court in case of ***Sun Chem V/s. G.E.B. Chairman & Ors.***, reported in *(2004)6 GHJ Page-251* in support of his above submission and therefore, it is requested to dismiss the present Special Civil Application.

6. Heard the learned advocates appearing on behalf of the parties.

7. On going through the communication dated 11.11.1997 i.e. the application submitted by the petitioner, the petitioner has agreed that the liabilities of GEB, GIDC, etc., shall be borne by the petitioner. Not only that an agreement to that effect has also been entered into. Under the circumstances, it is now not open for

the petitioner to contend that the petitioner has no liability to pay the dues of the erstwhile owner. Under the circumstances and considering the judgment of the learned Single Judge of this Court in case of ***Sun Chem V/s. G.E.B. Chairman & Ors.***,(supra), there is no substance in the present Special Civil Application and it cannot be said that insistance on the part of the respondent directing the petitioner to clear the dues of the erstwhile owner is in any way illegal and/or arbitrary, which requires to be quashed and set aside by this Court.

8. For the reasons stated above, the petition fails. Rule is discharged. Ad-interim relief, if any, stands vacated forthwith. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.